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MATTERS RELATING TO COMMITMENTS

REVIEW OF ADEQUACY OF COMMITMENTS IN ARTICLE 4.2(A) AND (B)

Note by the interim secretariat

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I. INTRODUCTION

A. Committee mandate

1. The work plan adopted by the Committee at its sixth session included task A.4, "Review of adequacy of commitments in Article 4.2(a) and (b)" (A/AC.237/24, para. 44). The task was assigned to Working Group I. It was noted that issues to be considered would include:

- The nature and sources of information to be taken into account
- Requests for such information in time for the Conference of the Parties (COP) process
- The role of the Subsidiary Body for Scientific and Technological Advice (SBSTA)

2. It was also noted that the second assessment report by the Intergovernmental Panel on Climate Change (IPCC) would not be ready before September/August 1995 (now expected at the end of 1995), but that a special report would be prepared by the IPCC in mid-1994 (now expected in November 1994). The Committee would, however, be kept informed of progress in the work of the IPCC through the interim secretariat and the chairman of the IPCC.

3. The Committee, at its seventh session, decided not to include the review of adequacy of commitments in the list of priorities for Working Group I at the eighth session (A/AC.237/31, para. 49). However, that session saw some headway made in the consideration of the process for the communication and review of information, which also touched upon the review of adequacy of commitments (A/AC.237/41, paras. 57-66). As a result, the Committee asked the interim secretariat to provide additional information for the ninth session to facilitate discussion on the first review of the adequacy of commitments (A/AC.237/41, para. 64).

B. Convention provisions

4. Article 4.2(d) calls specifically on the COP (COP 1), at its first session, to review the adequacy of Article 4.2(a) and (b), which contains commitments by developed country Parties included in Annex I relating to the limitation of greenhouse gas emissions and the protection and enhancement of sinks and reservoirs. Article 4.2(d) further provides that "such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information. Based on this review, the Conference of the Parties shall take appropriate action, which may include the adoption of amendments to the commitments in [Article 4] subparagraphs (a) and (b)". Article 4.2(d) further stipulates that the second review of these subparagraphs shall take place not later than 31 December 1998, and thereafter at regular intervals determined by the COP, until the objective of the Convention is met.

C. Scope of the note

5. The intention of the present note is to provide the Committee with information and suggestions on how to approach the first review of the adequacy of commitments in Article 4.2(a) and (b) (hereafter referred to as "review of the adequacy of commitments"). Section II outlines the working hypothesis for the scope of the review on which the interim secretariat has based the content of this note. Section III describes the various inputs to the review of the adequacy of commitments. Section IV presents possible options available to the COP for responding to the outcome of such a review.

6. This note draws upon the Convention and makes use of the documentation prepared for the eighth session, especially document A/AC.237/36 and Add.1. It also draws upon and reflects aspects of documents A/AC.237/44 on methodological questions, A/AC.237/45 on the first review of information and A/AC.237/46 on the roles of the subsidiary bodies.

D. Possible action by the Committee

7. As this will be the first opportunity to consider the review of the adequacy of commitments, the Committee may wish to have a thorough exchange of views on the issue. Preliminary conclusions on the **scope of the review, expected inputs** and their **timing and scheduling**, and on **institutional responsibilities** relating to the delivery of products needed at the first session of the COP would be useful. In this regard, the Committee's decision regarding **possible interim arrangements** to carry out the tasks of the subsidiary bodies prior to COP 1 will be of particular importance for the process of reviewing the adequacy of commitments. The Committee may wish to give indications of whether COP 1, based on current work programmes and schedules, will have sufficient information in time to carry out a meaningful review of the adequacy of commitments, and if not, **what additional work would be required**. In the latter case, it would be important to indicate who should undertake the work and when the results should be available. The Committee may also wish to consider possible scenarios for COP 1, in particular the **type of decisions that could result from the review** and any follow-up actions that might be initiated. Some attention will have to be paid to ensuring consistency between conclusions on this document and on relevant aspects of document A/AC.237/46 on the roles of the subsidiary bodies.

II. SCOPE OF THE REVIEW

8. In preparing this note, the interim secretariat has been guided by the following working hypothesis on the scope of the review. The subject of the review would be the adequacy of subparagraphs (a) and (b) of Article 4.2 in their entirety, with particular attention to the commitments contained therein. The primary point of reference for the review has been assumed to be the ultimate objective of the Convention contained in Article 2 and the progress towards its achievement. In this hypothesis, the process for the review of the adequacy of commitments is assumed to be separate from the review of the implementation of these commitments although the aggregate assessment resulting from the latter review would be

relevant to the consideration of possible follow-up action. It has also been assumed that the reviews to be undertaken by the COP in fulfillment of its responsibilities under Article 7.2(a) and (e), namely, to examine periodically the implementation of the Convention as a whole, the obligations of the Parties and the institutional arrangements, are distinct from the reviews of the adequacy of Articles 4.2(a) and (b) and will be undertaken at future sessions of the COP.

III. INPUTS TO THE FIRST REVIEW OF THE ADEQUACY OF COMMITMENTS IN ARTICLE 4.2(A) AND (B)

9. As concluded at the eighth session, the review of the adequacy of commitments would be based primarily on a compilation and a synthesis of information on the global situation (A/AC.237/41, para. 63). A technical analysis and a compilation and synthesis of the information in national communications would also contain input, particularly with regard to the aggregate effect of measures, relevant to the consideration of any follow-up actions.

10. The sources of the inputs to the first review of the adequacy of commitments are considered in document A/AC.237/46 on the roles of the subsidiary bodies. That document recommends that the main responsibility for the function of supporting the COP in the review of the adequacy of commitments should rest with the Subsidiary Body for Implementation. The Committee's decision on how the work of the subsidiary bodies should be carried out prior to COP 1 will be particularly relevant to the process for the first review of the adequacy of commitments.

A. Information on the global situation

11. Article 4.2(d) provides that the review of the adequacy of commitments in Article 4.2(a) and (b) shall be carried out in the light of scientific, technical, social and economic information -- referred to here as information on the global situation. COP 1, and any forum undertaking preparatory work in the interim, would have available to it information on the global situation from competent scientific bodies, notably:

(a) The IPCC first assessment report (1990);

(b) The supplement to the IPCC first assessment report (1992);

(c) The special report of the IPCC to be available in November 1994 which is expected to include updated information on carbon dioxide and the carbon cycle, other trace gases and atmospheric chemistry, atmospheric aerosols, radiative forcing, the relative importance of emissions of different greenhouse gases, emissions scenarios and sensitivity studies; and

(d) Any compilation and synthesis of the above information prepared under the authority of the interim SBSTA or the Committee acting on its behalf, as decided by the Committee pursuant to its consideration of document A/AC.237/46.

12. Other sources of information on the global situation could also be taken into account. It is not clear, however, whether the interim arrangements and the time-frame leading up to COP 1 would allow for their consideration; even a compilation and synthesis of information from the IPCC on the global situation might be difficult to achieve and to make available in the official languages in time for COP 1. In this respect, an early decision on the actions to be taken prior to COP 1, including any role for interim subsidiary bodies or for the Committee, as well as any supporting work by the interim secretariat would help lay the groundwork for the review of the adequacy of commitments.

13. In reviewing the information on the global situation, special attention might be paid to the following (to the extent that it is available):

(a) The science of climate change, including the trends in atmospheric concentrations of greenhouse gases, the sensitivity of global mean surface temperatures to doubling of CO_2, and trends in the global mean surface temperature;

(b) Scientific developments regarding impacts, especially regional impacts, sensitivities of ecosystems, vulnerability of food production and impacts on sustainable economic development;

(c) Knowledge of greenhouse gas sinks;

(d) Technical and/or economic developments related to response options either to mitigate or to adapt to climate change; and

(e) Scientific judgements of key uncertainties.

14. The Committee may wish to provide further guidance on the type and format of the information on the global situation that should be provided to COP 1 for its review of the adequacy of commitments. Any areas requiring additional work would have to be identified as a matter of priority.

B. Information communicated by Annex I Parties

15. It may be assumed that, in accordance with Article 10.2(b), COP 1 would have at its disposal relevant information from national communications in a form appropriate to its needs. In addition to the national communications themselves, it would have before it an analysis of national communications and a compilation and synthesis of the information provided, including the overall effects of policies and measures (see A/AC.237/41, paras. 61 and 62 and A/AC.237/45). The synthesis report transmitted to the COP should consider, in particular, how the effects of the steps taken by Parties relate to the benchmarks set out in Article 4.2(a) and (b) and to the objective of the Convention. This information would be especially relevant to any consideration of possible follow-up to the review of adequacy of commitments.

16. The Committee may wish to provide further guidance on the type and format of the information to be included in the analysis, compilation and synthesis documents.

IV. POSSIBLE FOLLOW-UP TO THE REVIEW

17. COP 1 could conclude, in the light of the available information, that:

(a) **Article 4.2(a) and (b) is adequate** and that

(i) No further action is required at COP 1, or
(ii) COP 1 should establish the date for the second review.

(b) **Article 4.2(a) and (b) is not adequate and some follow-up action is required.** Decisions along the following lines could be envisaged:

(i) Amendments to Article 4.2(a) and (b), or amendments to add relevant new provisions to the Convention, are necessary and should be:

- considered, and possibly adopted, at COP 1, or
- negotiated through a process initiated at COP 1.

(ii) A protocol to the Convention is necessary and should be negotiated through a process initiated at COP 1;

(iii) A resolution by the Parties should be adopted.

18. These options are reviewed below. An option under which the Parties are unable to reach agreement on the adequacy of commitments is not considered here. The option of negotiating an annex to the Convention is also not pursued because of the provisions of Article 16.1 limiting annexes to "lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character." In addition, the note does not address the specific content of possible amendments or protocols.

A. Article 4.2(a) and (b) is adequate

19. COP 1 may conclude that the information on the science of climate change and the relevant technical, social and economic information, do not necessitate any adjustment in the commitments contained in Article 4.2(a) and (b). This could result in a decision to conclude the agenda item or, alternatively, to fix a date for the second review. The Convention requires that the second review take place "not later than 31 December 1998". On the assumption that the COP continues to meet annually, such a review could take place at COP 2 (1996), COP 3 (1997) or COP 4 (1998). The release of the second assessment report by the IPCC in late 1995 could be relevant in this regard. There would also have to be coordination with the decision on the periodicity of subsequent national communications and their review (see A/AC.237/45).

B. Article 4.2(a) and (b) is not adequate -- further action required

20. The following paragraphs review a number of considerations relevant to each option including legal issues and timing.

1. Amendment of the Convention

21. COP 1 could decide that the best way to address any perceived inadequacies in Article 4.2(a) and (b) and to agree on further steps would be through a process of amending the Convention. Amendments to the Convention are dealt with in Article 15, the key provisions of which are as follows:

(a) Any Party may propose amendments;

(b) Amendments shall be adopted at an ordinary session of the COP;

(c) The text of any proposed amendment shall be communicated to the Parties by the secretariat at least six months prior to the meeting at which it is proposed for adoption; and

(d) Adoption shall be by consensus or, failing that, by a three-fourths majority vote of the Parties present and voting.

22. Amendments can, in general, take the form of minor adjustments to the text of an agreement designed to clarify certain provisions or to add additional provisions. Alternatively, they can take the form of entire new articles or sections that would bring additional new substantive provisions to an agreement. When an agreement is composed of many interrelated sections that have been negotiated to establish a balance between them, amendments should take into account this integration. Depending on the prevailing political climate, amendments can take considerable time to develop, adopt and accept. Amendments also have the potential to develop different regimes among Parties to the Convention because only those Parties which accept the amendments are bound by them.

23. In the context of COP 1, it is conceivable that a Party, on the basis of its own analysis of available information on the global situation, could propose an amendment in time for consideration by COP 1. This would mean that the text of the proposed amendment would have to be available and circulated to Parties six months before COP 1, that is, around mid-September 1994. Even though there are no qualifications in the Convention with respect to the basis for proposing an amendment, it would be expected that any proposal would be based on solid information and justification. Although the COP would not have met to effect a review of the adequacy of commitments at the time the amendment is proposed, an analysis of information on the global situation could indicate the desirability of the Parties adopting measures to amend the commitments in Article 4.2(a) and (b). It could be expected that any proposed amendment would be considered in the context of the interim arrangements to carry out the functions of the subsidiary bodies prior to COP 1.

24. In this scenario, any proposed amendments would be considered at COP 1 immediately after completion of the review of the adequacy of commitments. This could result in a decision to adopt the proposed amendments, to reject the proposed amendments, or to give them further study. The latter scenario could entail one of the subsidiary bodies, or some other ad hoc open-ended body under the Convention, being asked to examine the proposals and report back to the next session of the COP.

25. In the event that no amendments are submitted prior to COP 1, the Parties could still, on the basis of a determination that Article 4.2(a) and (b) is not adequate and that further steps were required, consider amending the Convention. In this case, the COP could ask one of the subsidiary bodies, or some other ad hoc open-ended body under the COP, to consider or negotiate possible amendments for consideration at COP 2. The six-month circulation provision would have to be borne in mind.

2. Negotiating a protocol

26. COP 1 could decide that the best way to address any perceived inadequacies in Article 4.2(a) and (b) and to agree on further steps would be through the negotiation of a protocol to the Convention rather than by opening the text of the Convention. (Although technically possible for COP 1 to adopt a protocol proposed by a Party, this option is not considered here.) Protocols are dealt with in Article 17, the key provisions of which are that:

(a) The COP may adopt protocols at any ordinary session;

(b) The text of any protocol shall be communicated to the Parties at least six months before a session;

(c) The requirements for entry into force of any protocol shall be established by that instrument; and

(d) Decisions under any protocol shall be taken only by the Parties to that protocol.

27. Protocols enable Parties to elaborate on important issues in an agreement without renegotiating the text of that agreement. They can establish new commitments or address the timing of implementation. They can be focused on a particular problem, gas, policy instrument or sector and have the advantage of allowing the Parties to deal with the subject in some detail. The negotiation and adoption of protocols, however, can take as long as, or longer than, the negotiation of a convention. This is particularly true because protocols are normally more detailed and technical and can therefore take considerable time to ratify. They are legally binding only upon the Parties ratifying, accepting or approving them. Thus, as with amendments, there is the potential for the development of different regimes among Parties.

28. If COP 1 were to decide that the negotiation of a protocol should be initiated it would have to decide on the appropriate forum for such negotiations. Options include one of the subsidiary bodies or an ad hoc open ended working group. It would also have to agree on the

mandate of the forum. For example, it could be asked to develop options for consideration by the COP or actually to negotiate a draft protocol. The COP would also have to provide guidance on when results should be reported back to it. Most important, the COP would have to decide on the subject matter of any protocol. It could also provide guidance on how the institutional frameworks of the Convention and a protocol should relate to one another.

C. Adoption of a resolution by the Parties

29. COP 1 might conclude that the best way to address any perceived inadequacies in Article 4.2(a) and (b) would be through the adoption of a resolution that would clarify or interpret the relevant text, provide guidance to the Parties in implementing the Article, or reflect a political statement of will by the Parties. Such a resolution would be adopted in accordance with the decision-making procedures laid down in the rules of procedure and would be included in the report of COP 1. It would not, however, be legally binding.

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